

(2) Because of the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case shall the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

46.505 Transfer of title and risk of loss.

(a) Title to supplies shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(e) The policy expressed in (a) through (d) above is specified in the clause at 52.246-16, Responsibility for Supplies, which is prescribed in 46.316.

Subpart 46.6—Material Inspection and Receiving Reports

46.601 General.

Agencies shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and

commercial shipping document/packing lists to evidence Government inspection (see 46.401) and acceptance (see 46.501).

Subpart 46.7—Warranties

46.701 [Reserved]

46.702 General.

(a) The principal purposes of a warranty in a Government contract are (1) to delineate the rights and obligations of the contractor and the Government for defective items and services and (2) to foster quality performance.

(b) Generally, a warranty should provide—

(1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the Government; and

(2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.

(c) The benefits to be derived from a warranty must be commensurate with the cost of the warranty to the Government.

46.703 Criteria for use of warranties.

The use of warranties is not mandatory. In determining whether a warranty is appropriate for a specific acquisition, the contracting officer shall consider the following factors:

(a) *Nature and use of the supplies or services.* This includes such factors as—

(1) Complexity and function;

(2) Degree of development;

(3) State of the art;

(4) End use;

(5) Difficulty in detecting defects before acceptance; and

(6) Potential harm to the Government if the item is defective.

(b) *Cost.* Warranty costs arise from—

(1) The contractor's charge for accepting the deferred liability created by the warranty; and

(2) Government administration and enforcement of the warranty (see paragraph (c) below).

(c) *Administration and enforcement.* The Government's ability to enforce